

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No. : 10/718,361
Applicant(s) : James F. Desmond
Filed : 11/19/2003
Title : Portable Storage Kit System
T.C./A.U. : 3700/3721
Examiner : Sameh H. Tawfik
Conf. No. : 9536
Docket No. : P02784
Customer No. : 28548

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REHEARING UNDER 37 C.F.R. § 41.52

Under 37 C.F.R. § 41.52, appellant submits this request for rehearing from the decision of the Board of September 18, 2009.

It is respectfully submitted that the following point is believed to have been misapprehended or overlooked by the Board: In the instant case, the Board has ruled that Appellant's claims were "obvious" based on reasoning that Appellant's claimed "flexible squeeze tube" should carry a meaning other than that of a "flexible squeeze tube", namely that of a "flexible bag."

Respectfully, Appellant's position is that the Board has broadened the plain meaning of Appellant's claimed term beyond the plain meaning of that term. *See* MPEP § 2111.01 (The words of a claim must be given their "plain meaning"). Further, Appellant respectfully submits that the broadest reasonable interpretation of the claims must be consistent with the interpretation that those skilled in the art would reach. *In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

CERTIFICATE OF TRANSMISSION

I hereby certify that, on the date shown below, this correspondence is being transmitted to the U.S. Patent and Trademark Office by EFS-Web.

Date: November 13, 2009

/Glenn W. Stoneman/

Signature

Glenn Stoneman

(type or print name of person certifying)

In this case, Appellant respectfully submits that the plain meaning of the term "flexible squeeze tube" clearly does not encompass that of a "flexible bag". Further, Appellant respectfully submits that those skilled in the art would not construe the term "flexible squeeze tube" to mean a "flexible bag." For example, and practically speaking, toothpaste is never sold in a "flexible bag", potato chips are never sold in a "flexible squeeze tube", one does not take their groceries home in a "flexible squeeze tube", and sunscreen is never dispensed from a "flexible bag." Clearly, a "flexible bag" is a different animal than a "flexible squeeze tube." Appellant respectfully notes that during prosecution of this application, other claims used the term "flexible bag" as a distinct element from "flexible squeeze tube". *See, e.g.*, claim 30 as originally filed ("The portable refilling system according to Claim 16 wherein said at least one container comprises at least one flexible bag...").

Appellant respectfully requests a rehearing on the above point believed to be misapprehended or overlooked by the Board. Appellant respectfully submits that use of the plain meaning of the term "flexible squeeze tube" would lead the Board to reverse the Examiner's decision. Appellant respectfully requests that the Board reverse the rejection of the Examiner.

As an aside, Appellant respectfully notes that the embodiments of the claimed invention have been commercially significant in the area of airport screening as they assist in an air traveler's trek through airport security (the embodiments are fully compliant with the 3-1-1 rules of the Transportation Security Administration).

If there are any fees necessitated by the foregoing communication, please charge such fees or credit any overpayment to our Deposit Account No. 50-1887.

Respectfully submitted,

Date: November 11, 2009

/Michael D. Volk Jr./
Michael D. Volk Jr. (Reg. No. 59,338)
STONEMAN VOLK PATENT GROUP
3770 North 7th Street, Suite 100
Phoenix, AZ 85014
Tel: 602.263.9200 | 888.252.2200
Fax: 602.277.4883
<http://www.patentdoc.com/>